

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

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v.

Case No. 4:22-cr-612

CONSTANTINESCU, *et al.*

The Honorable Andrew S. Hanen

Defendants.

United States' Notice in Response to the Court's September 12, 2023 Order

The United States, by and through its undersigned counsel, provides the following update to the Court about its efforts to obtain information from FINRA and the SEC. *See* Order at 1, ECF No. 414 (Sept. 12, 2023) (ordering the United States to obtain and produce from FINRA and the SEC “exculpatory records concerning the stocks that are the basis of the charges and the stocks included in all of the extraneous trades that the Government is seeking to admit into evidence” and to provide an update on this production by October 13, 2023) (“Order”).

First, as to FINRA, the United States, after consulting with FINRA personnel to determine where relevant documents may be located, requested the following:

Documents evidencing the conclusion of investigations or reviews by FINRA’s Market Investigations Team during period January 2020 through April 2022 involving:

- (1) any of the named Defendants in the Superseding Indictment in the above-captioned matter, or
- (2) any of the stock tickers and for the time period appended as Exhibit 1 to this letter.

Ltr. from Armstrong, S. to Draddy, S. (Oct. 4, 2023) (Ex. 1) (“Access Request”). As noted in the Order, the United States’ request of FINRA related to the narrowed “Trial Episodes.” *See* Ex. 1 at 5–6 (listing the trial episodes).¹

Representatives of FINRA have been working diligently to locate and produce to the United States any documents that fall within the parameters of the Access Request. The United States anticipates receiving from FINRA such documents on or about October 20, 2023. The United States will then promptly produce those same materials to Defendants.

The United States’ request of FINRA, and forthcoming production to Defendants of FINRA materials, is broader than the Court’s Order requiring the production of only “exculpatory” materials. As the Court is likely aware, the United States and the Defendants have differing views of what material is exculpatory under *Brady*, or even relevant to the charges in this case. To avoid further litigation and in an abundance of caution, the United States will be producing to Defendants all documents identified by FINRA that are responsive to the Access Request. In this way, the United States aims to align itself to the Court’s commentary that discovery is broader than admissibility.

Second, as to the SEC, the United States requested, among other things, materials obtained by the SEC through process to third parties as part of the SEC’s parallel, civil case against the Defendants (“Investigative File”). *See Sec. & Exchange Comm. v. Edward Constantin, et al.*, 4-22-cv-04306 (Dec. 13, 2022). As with its FINRA request, the United States sought from the SEC a broader universe of information than required by the Order.

¹ The Trial Episodes were previously noticed to the Court. *See* ECF No. 424, Ex. 1.

SEC personnel have been working diligently to produce the Investigative File to the United States. The Investigative File includes, among other information, (1) bank and brokerage records obtained in the course of the SEC's investigation; (2) collections of then-publicly available information, such as web captures of social-media activity, Twitter scrapes, and podcasts; (3) "blue sheets" for any of Trial Episodes, Ex. 1 at 5-6; and (4) notes of interview of three individuals.² The SEC has shipped the bulk of the Investigative File to the United States, and those materials will be produced to Defendants in this case the week of October 16, 2023.³ The SEC anticipates producing to the United States additional documents from the Investigative File in the coming weeks, which will then be promptly produced in this case. In the interim and afterwards, the SEC will continue to review its Investigative File for any *Brady* material and promptly produce any potential information to the United States, if any additional applicable information is uncovered.⁴ The United States, consistent with its above-stated approach, is producing the Investigative File in an abundance of caution and to allow Defendants to make any use of it far in advance of the April 2024 trial. To be sure, the United States will prosecute this case at trial with the information already produced to Defendants in discovery in this case.

Other investigative teams at the SEC were also queried about information in their respective investigative files involving price manipulation as to the Trial Episodes (*see* Ex. 1 at 5-6). To date, those efforts have not produced information responsive to the Order. If those ongoing

² The United States will provide the identity of these individuals to Defendants under separate cover.

³ The United States anticipates that some of the materials in the Investigative File will be duplicative of the information already produced to Defendants in this case.

⁴ The United States will promptly produce any such information to Defendants.

efforts uncover any potential *Brady* material, the SEC will produce it to the United States so that it will be promptly produced in this case.

SEC personnel involved in the drafting of the SEC “Staff Report on Equity and Options Market Structure Conditions in Early 2021” were also queried about information in their files involving price manipulation as to the Trial Episodes. Those efforts have not produced information responsive to the Order.

At bottom, personnel at both FINRA and SEC have expended significant resources to identify, collect, and produce information in response to the Order. The United States respectfully submits that the forthcoming FINRA and SEC productions to Defendants, as well as concluding the above-referenced remaining efforts, represent a good-faith attempt to provide information to the Defendants, avoid further litigation on this issue, and fulfill its obligations to the Court.

Dated: October 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2023, I will cause the foregoing motion to be electronically filed with the Clerk of the Court using the CM/ECF system, which will provide copies to counsel for all parties.

/s/ Scott Armstrong
Scott Armstrong
U.S. Department of Justice
Criminal Division, Fraud Section